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National Heritage Foundation, Inc.*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:	§	
	§	
National Heritage Foundation, Inc.,	§	Case No. 09-10525 (BFK)
	§	
	§	Chapter 11
Reorganized Debtor.	§	

**MOTION FOR ORDER DIRECTING DISBURSEMENT OF FUNDS IN COURT
REGISTRY**

National Heritage Foundation, Inc., the Reorganized Debtor (“NHF”), by its undersigned counsel, pursuant to Federal Rule of Bankruptcy Procedure 7067, Local Bankruptcy Rule 7067-1, Federal Rule of Bankruptcy Procedure 9013, and Local Bankruptcy Rule 9013-1(A), files this Motion (the “Motion”) for an order directing disbursement of funds in the Court registry, and in support thereof states as follows:

I. FACTUAL BACKGROUND

1. On June 21, 2013, the Court issued its “Opinion and Order Adjudging John and Nancy Behrmann, Jonathan D. Miller, Nye, Peabody, Stirling, Hale & Miller, LLP, Daniel J. Schendzielos and Schendzielos & Associates, LLC (the “Respondents”) to Be In Contempt of Court” (Dkt No. 1187) (the “Contempt Order”).

2. In the Contempt Order, the Court, among other things, required the Respondents to dismiss a lawsuit against the Debtor and to amend their Complaint in the United States District Court for the Central District of California to delete the impermissibly filed Exculpated Claims against the Debtor's Officers and Directors within ten days.

3. Because of the Respondents failure to comply with this portion of the Contempt Order, on April 1, 2014, the Court awarded a final judgment against the Respondents in an additional amount of \$18,000 (the "Per Diem Fine Order").¹

4. On April 11, 2014, the Respondents appealed the Per Diem Fine Order to the United States District Court for the Eastern District of Virginia (the "District Court").

5. Also on April 11, 2014, the Respondents deposited \$25,000 in the Court Registry (Dkt No. 1308). This deposit, in lieu of a supersedeas bond, stayed any enforcement of the money judgment awarded in the Per Diem Fine Order.

6. On September 26, 2014, the District Court affirmed the Per Diem Fine Order (Dkt Nos. 1342 and 1343).

7. On October 27, 2014, the Respondents appealed the District Court's affirmation of the Per Diem Fine Order to the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit") (District Court Dkt No. 40).

8. On July 30, 2015, the Fourth Circuit issued a judgment that affirmed the District Court's ruling (Dkt No. 1353).

9. On August 21, 2015, the Fourth Circuit issued its mandate (4th Cir. Dkt No. 58). On that date, the Fourth Circuit's July 30, 2015 judgment became final. Accordingly, the money

¹ This amount was in addition to the amount of sanctions awarded pursuant to the Contempt Order.

judgment awarded in the Per Diem Fine Order is no longer subject to any appeals and is a final order.

II. ARGUMENT

10. The Respondents' appeal regarding the money judgment awarded in the Contempt Order is now final. Therefore, the Court should release \$18,033.21 from the funds deposited into the Court registry to NHF. The remainder of the funds deposited into the Court registry, \$6,966.79, should be returned to the Behrmanns.

11. Pursuant to 28 U.S.C. § 1961(a), NHF is entitled to post-judgment interest at the rate of .12%. Thus, NHF is entitled to a total amount of \$18,030.66, including interest accumulated through the date of the submission of this Motion in the amount of \$30.66.

12. NHF has met and conferred with Respondents who consent to this Motion. A consent order has been submitted concurrently with this Motion.

III. WAIVER OF MEMORANDUM OF LAW

Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in this Motion, NHF requests that this Court waive the requirement that all motions be accompanied by a written memorandum of law.

IV. CONCLUSION

13. WHEREFORE, for the foregoing reasons, NHF respectfully requests that the Court release funds from the Court registry to NHF in a total amount of \$18,030.66. The remainder of the funds deposited into the Court registry, \$6,969.34, should be returned to the Behrmanns.

Dated: September 11, 2015

Respectfully submitted,

/s/ Erika L. Morabito

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2015, a true and correct copy of the foregoing MOTION FOR ORDER DIRECTING DISBURSEMENT OF FUNDS IN COURT REGISTRY was filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter. I have also served copies of the foregoing via e-mail on the following:

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